

1 Jesse Panuccio
2 jpanuccio@bsflp.com
3 BOIES SCHILLER FLEXNER LLP
4 401 E. Las Olas Blvd., Ste. 1200
5 Fort Lauderdale, FL 33301
6 Telephone: (954) 356-0011

7 *Counsel for Movant Elisabeth DeVos*
8 *Appearing pursuant to Fed R. Civ. P. 45(f)*
9 *and Civ. L.R. 11-I(a)*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re
SUBPOENA SERVED ON FORMER
SECRETARY OF EDUCATION
ELISABETH DEVOS.

Case No.: MC 21-80075 WHA

**DECLARATION OF JESSE PANUCCIO
IN SUPPORT OF MOTION TO QUASH
RULE 45 SUBPOENA**

Judge: Honorable William Alsup
Hearing: May 18, 2021
Time: 8:00 a.m.

I, Jesse Panuccio, declare as follows:

1. I am an attorney licensed to practice law in the State of Florida and District of Columbia. I am a partner at the law firm of Boies Schiller Flexner LLP, counsel of record for former Secretary of Education, Elisabeth DeVos (“Movant”), in this matter. I make this declaration in support of Movant’s Motion to Quash Rule 45 Subpoena. I have personal knowledge of the facts stated herein and if called to testify could and would competently testify thereto.

2. Attached as Exhibit 1 is a true and correct copy of a press release titled “Student Borrowers Ask Court to Allow Deposition of Betsy DeVos on Borrower Defense.” This press release is available at <https://predatorystudentlending.org/news/press-releases/student-borrowers->

1 ask-court-to-allow-deposition-of-betsy-devos-on-borrower-defense-press-release/ and I last
2 accessed the website on April 19, 2021.

3 3. Attached as Exhibit 2 is a true and correct copy of an email chain from January
4 2021 between counsel for the United States Department of Justice and counsel for the Plaintiffs in
5 *Sweet, et al. v. Cardona, et al.*, Case No. 3:19-cv-03674 (N.D. Cal.) (the “Sweet Litigation”). The
6 attached version was filed in *In re Subpoena Served on Elisabeth DeVos*, Case No. 21-mc-14073
7 (S.D. Fla.) as docket entry 12-4.

8 4. Attached as Exhibit 3 is a true and correct copy of an email chain from January
9 2021 between counsel for the United States Department of Justice and counsel for the Plaintiffs in
10 the *Sweet* Litigation.

11 5. Attached as Exhibit 4 is a true and correct copy of the subpoena to testify and notice
12 of deposition served upon Elisabeth DeVos by Plaintiffs in the *Sweet* Litigation.

13 6. Attached as Exhibit 5 is a true and correct copy of the transcript from the February
14 24, 2021 hearing in the *Sweet* Litigation.

15 7. Attached as Exhibit 6 is a true and correct copy of a screenshot of the website
16 <https://predatorystudentlending.org/cases/sweet-v-devos/#sweet-coverage> taken on February 21,
17 2021.

18 8. Attached as Exhibit 7 is a true and correct copy of excerpts from the December 15,
19 2020 deposition of Mark Brown in the *Sweet* Litigation. Exhibit 7 includes pages 1-13, 78-81, and
20 226-233.

21 9. Attached as Exhibit 8 is a true and correct copy of excerpts from the December 17,
22 2020 deposition of James Manning in the *Sweet* Litigation. Exhibit 8 includes pages 1-9 and 66-
23 73. Attached as Exhibit 9 is a true and correct copy of excerpts from the docket in *Energy Capital*
24 *Corp. v. United States*, Case No. 97-cv-00293 (C.F.C.).

25 10. Attached as Exhibit 10 is a true and correct copy of excerpts from the November
26 20, 2020 deposition of Diane Jones in the *Sweet* Litigation. Exhibit 10 includes pages 1-13 and
27 182-185.

1 11. In order to obtain the figures listed in footnote 12 of the Motion to Quash Rule 45
2 Subpoena, an attorney acting pursuant to my direction first ran a search on PACER PRO for all
3 civil cases filed against the United States Department of Education from January 1, 2017 to January
4 1, 2021, which revealed an entry of nearly 200 newly-filed cases. Then, the attorney narrowed
5 those results to obtain only those civil cases still pending against the Department that were filed
6 on or before January 1, 2021, which revealed 48 cases. Finally, the attorney ran a separate search
7 for all civil cases initiated against Secretary DeVos in her official capacity from January 1, 2017
8 to January 1, 2021, which returned 47 cases.

9 12. At 9:20 p.m. EDT (6:20 p.m. PDT) on April 19, 2021, I sent an email to counsel
10 for Plaintiffs in *Sweet, et al. v. Rosenfelt, et al.*, 3:19-cv-03674 (N.D. Cal.), explaining that,
11 Secretary DeVos continues to maintain that the subpoena Plaintiffs served is prohibited under Rule
12 45 and the *Morgan* doctrine and that, accordingly, she planned to submit a motion and brief asking
13 this Court to quash the subpoena. I asked counsel for Plaintiffs for their position on that proposed
14 motion.

15 13. At 11:12 a.m. EDT (8:12 p.m. PDT) on April 20, 2021, counsel for Plaintiffs
16 responded and noted their opposition to the proposed motion to quash.

17 I declare under penalty of perjury under the laws of the United States that the foregoing is
18 true and correct.

19 Dated: April 20, 2021

/s/ Jesse Panuccio
Jesse Panuccio